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SUBJECT: TYMOSHENKO DOES BETTER THAN EXPECTED BUT FALLS
SHORT; NGOS DECLARE ELECTION FREE AND FAIR

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Summary

1. (SBU) PM Yuliya Tymoshenko exceeded expectations by narrowing a ten percent post-first round gap with rival Viktor Yanukovich to a surprisingly close 2.86 percent (with 98.8% of the vote counted) in the February 7 presidential runoff. Higher than expected turnout in western Ukraine accounted for much of Tymoshenko's surge. International and domestic observers -- including ODIHR, IRI, OPORA, ENEMO and the OSCE Parliamentary Assembly -- characterized the election as essentially free and fair. None reported systematic fraud that could have undermined the result. PM Tymoshenko has neither conceded defeat nor announced whether she plans to contest the result in court -- or convoke street protests. Twice on February 8 Tymoshenko canceled press conferences; she may announce her intentions February 9. Yanukovich's team has asked her to concede and is seeking recognition for Yanukovich as President elect. End Summary.

Tymoshenko Exceeds Expectations But Falls Short

2. (SBU) As of 1700 local February 8, with 98.8% of precincts processed, the Central Election Commission of Ukraine (CEC) reported that Party of Regions (Regions) candidate Viktor Yanukovich had received 48.65%, PM Yuliya Tymoshenko had received 45.77%, and 4.38% of voters had voted "against all." Voters cast over twenty five million ballots. The 2.88% gap between Yanukovich and Tymoshenko surprised many political experts, including those in the Yanukovich campaign. Yanukovich advisors had expected a ten percent or more margin. Turnout in western Ukraine was about ten percent higher than they anticipated.

ODIHR and Parliamentary Assemblies: "Professional,
Transparent and Honest"

3. (SBU) On the eve of election day, OSCE/ODIHR responded on February 5 to PM Tymoshenko's concerns about the February 4 changes to the Presidential Election Law (reftel). In her letter, ODIHR Ambassador Heidi Tagliavini conceded that "it is not good practice to make last-minute amendments to the election law shortly before election day, in particular not between two rounds of an election." Tagliavini added, however, that ODIHR did not conclude from its analysis of the amendments that their adoption undermined the electoral process in Ukraine. ODIHR emphasized that the changes to the law would not take effect if all members of the Precinct Election Commissions (PECs) and District Election Commissions (DECs) showed up for work. Tagliavini's response placed the integrity of the elections firmly in the hands of the two

candidates and their supporters, and reiterated ODIHR's view that Ukraine's amended Presidential Election Law could provide the basis for an orderly and democratic election, something, she added, that Ukraine wanted and needed.

14. (U) In a joint statement on February 8, representatives of ODIHR, the European Parliament, and the Parliamentary Assemblies of the Council of Europe, NATO, and the OSCE stated that most OSCE and Council of Europe commitments were met during the second round of elections. They characterized the voting as "professional, transparent and honest" and "a solid foundation for a peaceful transition of power." President of the OSCE Parliamentary Assembly and Special Coordinator of the OSCE short-term observers, Joao Soares, described the elections as "an impressive display of democratic elections" and a victory for everyone in Ukraine.

OPORA: "No Systematic Violations"

15. (SBU) Local NGO OPORA, which had 1003 short-term observers (STOs) stationed throughout Ukraine, said in its press statement on February 8 that it had not recorded "any systematic violations of the election legislation" that would have had a significant impact on the voting results. OPORA anticipates that both candidates will challenge the results of specific precincts in court, but added that there did not appear to be a legitimate legal basis for doing so. OPORA representatives also observed that many of the procedural problems and organizational confusion experienced during the January 17 first round were not present during the second round.

16. (SBU) OPORA also found that the February 4 changes to the Presidential election law had "no impact" on the outcome, but

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rather "apparently mobilized commissioners from both candidates to participate in PECs and DEC's." While during the January 17 first round of voting, OPORA documented 12% of polling stations that did not have a quorum in the morning in order to open for voting, OPORA documented only 2.8% of such precincts during the February 7 second round. OPORA also performed a Parallel Vote Tabulation (PVT) on election night and recorded a gap of 3.7% between Yanukovich (who according to the PVT received 49.6%) and Tymoshenko (45.9%), with a 2.6% margin of error.

ENEMO: "Superior to the First Round"

17. (SBU) The European Network of Election Monitoring Organizations (ENEMO), which fielded about 450 observers, characterized the February 7 second round as proceeding "without any reports of systematic fraud," and as being "generally viewed as superior to the first round." It noted, however, that procedural and organizational problems pinpointed during the first round "continued hampering the work of many commissions, leading to unequal enforcement of the law across oblasts."

IRI: "Generally In Accordance with International Standards"

18. (SBU) In its February 8 statement the International Republican Institute (IRI) monitoring team, lead by former Assistant Secretary David Kramer, described the election as mostly open and transparent and "generally in accordance with international standards." IRI commented on the "unfortunate controversy" caused by the last-minute changes to the Presidential Election Law, but emphasized that these changes had "no appreciable effect on the results of the February 7 voting."

European Parliament: "No Widespread Violations"

¶9. (SBU) Head of the European Parliament monitoring delegation Pavel Koval stated on February 8 that based on reports from its STOs, PACE feels confident that "no large-scale violations" occurred during the February 7 second round of voting that would have a significant impact on the results of the election. PACE officials continued to collect information from their STO teams in the field. Koval also commented, in apparent reference to PM Tymoshenko, that "adherence to democratic standards means not just the fair vote, but also the voluntary transfer of power in case of defeat."

CVU: "While Complicated, No Systemic Fraud"

¶10. (SBU) The NGO "Committee of Voters of Ukraine" (CVU) criticized the behavior of the candidates and characterized the mood of the second round as more conflictual and tense than the first round of elections. Despite this, however, CVU stated that it did not find massive or systemic fraud that could have impacted the results of the elections or distorted the will of the citizens.

CIS Countries: "Meets Democratic Standards"

¶11. (SBU) The CIS Parliamentary Assembly and the CIS Election Monitoring Organizations (CIS EMO) released statements that the election met democratic standards and proceeded without K5hQzQ8\~Qampaign manager) Turchynov has alleged irregularities in Donetsk. He also declared that a internal count from the party's observers, with over 80 percent of the vote represented, indicated a 46-46 percent tie. Yanukovych's team has called on Tymoshenko to concede and has said there will be no witch hunt against the opposing side. They are seeking recognition of Yanukovych as President elect.

Comment

¶12. (SBU) With domestic and international observers declaring

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the election essentially free and fair, Tymoshenko and advisers are weighing her options. While a fighter by nature, she is down about 735,000 votes with the tally nearly final. While the conduct of the voting appears to have been up to international standards, how the loser exits -- by concession or via a drawn out struggle -- will speak volumes about the state of Ukraine's democracy.

TEFFT